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VESTA STRATEGIES, LLC; Third Party
Defendant SINGLE SITE SOLUTIONS
CORPORATION; Third Party Defendant
JOHN TERZAKIS; Third Party Defendant
B&B SPARCO PROPERTIES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VESTA STRATEGIES, LLC,

Plaintiff,

v.

ROBERT E. ESTUPINIAN, GINNY
ESTUPINIAN, MUTUAL VISION, LLC,
MILLENNIUM REALTY GROUP,
VESTA REVERSE 100, LLC, VESTA
CAPITAL ADVISORS, LLC, CAROL-
ANN TOGNAZZINI, EDMUNDO
ESTUPINIAN, and HAYDEE
ESTUPINIAN,

Defendants.

AND RELATED COUNTER CLAIMS
AND THIRD PARTY CLAIMS

CASE NO. C 07-06216 JW RS

**MOTION AND [PROPOSED] ORDER TO
EXTEND TIME FOR
PLAINTIFF/COUNTER DEFENDANT
VESTA STRATEGIES, LLC AND THIRD-
PARTY DEFENDANTS JOHN TERZAKIS,
SINGLE SITE SOLUTIONS CORP., B&B
SPARCO PROPERTIES, INC., AND
PETER YE TO RESPOND TO THE FIRST
AMENDED COUNTERCLAIM AND
FIRST AMENDED THIRD PARTY
COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 6(b) and L.R. 6-3, Plaintiff/Counter Defendant Vesta Strategies, LLC and Third Party Defendants John Terzakis, Single Site Solutions Corporation, B&B Sparco Properties, Inc., and Peter Ye respectfully move for an extension of time to respond to the First Amended Counterclaim and First Amended Third-Party Complaint of Defendants/Counter Plaintiffs/Third Party Claimants Mutual Vision, LLC, Robert Estupinian, and Ginny Estupinian and of Defendants/Third Party Claimants Millennium Realty Group, Vesta Reverse 100, LLC, Vesta Capital Advisors, LLC, Edmundo Estupinian, and Haydee Estupinian (Docket No. 44) up to and including May 9, 2008. Attached hereto is the Declaration of Aron J. Frakes in support of this Motion and [Proposed] Order.

Dated: April 22, 2008

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

By: /s/ Aron J. Frakes
Aron J. Frakes

Attorneys for Plaintiff and Counter Defendant VESTA STRATEGIES, LLC; Third Party Defendant SINGLE SITE SOLUTIONS CORPORATION; Third Party Defendant JOHN TERZAKIS; Third Party Defendant B&B SPARCO PROPERTIES, INC.

Dated: April 22, 2008

Respectfully submitted,

SHEUERMAN, MARTINI & TABARI

By: /s/ Alan L. Martini
Alan L. Martini

Attorneys for Third Party Defendant PETER YE

**DECLARATION OF ARON J. FRAKES IN SUPPORT OF
MOTION AND [PROPOSED] ORDER TO EXTEND TIME TO RESPOND
TO FIRST AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT**

I, Aron J. Frakes, declare as follows:

1. I am an attorney at the law firm of McDermott Will & Emery LLP, counsel of record for Plaintiff/Counter Defendant Vesta Strategies, LLC (“Vesta Strategies”) and Third Party Defendants John Terzakis (“Terzakis”), Single Site Solutions Corp. (“Single Site Solutions”), and B&B Sparco Properties, Inc. (“B&B Sparco,” and collectively with Vesta Strategies, Terzakis and Single Site Solutions, and Peter Ye, “Movants”). I am a member in good standing of the State Bar of Illinois and am admitted to practice *pro hac vice* in the United States District Court for the Northern District of California in this matter. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On December 17, 2007, Vesta Strategies filed an amended complaint against Mutual Vision, LLC, (“Mutual Vision”), Robert and Ginny Estupinian (collectively, the “Estupinians”), and Millennium Realty Group, Vesta Reverse 100, LLC, Vesta Capital Advisors, LLC, Carol-Ann Tognazzini, Edmundo Estupinian, and Haydee Estupinian. (*See* Doc. 12.)

3. On January 7, 2008, Mutual Vision and the Estupinians’ filed a counterclaim against Vesta Strategies and purported third-party claims against Terzakis, Single Site Solutions, B&B Sparco, and Peter Ye (the “Original Counterclaim”). (*See* Doc. 23.) Pursuant to Federal Rule of Civil Procedure 4(d)(3), Movants agreed to waive service of process on or about January 14, 2008. Under the Federal Rules of Civil Procedure, Movants therefore had 60 days to respond to the Original Counterclaim. On March 14, 2008, Movants timely filed a motion to dismiss all of Mutual Vision’s and the Estupinians’ claims in the Original Counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(6) and Terzakis additionally moved for an order to strike Mutual Vision’s and the Estupinians’ claim for libel and slander and for attorneys’ fees and costs pursuant to the California Anti-SLAPP Statute, CAL. CIV. P. CODE § 425.16 *et seq.* (Doc. 31.)

4. Rather than respond to Movants’ motion to dismiss all of their claims and

1 Terzakis's anti-SLAPP motion, Mutual Vision and the Estupinians filed their First Amended
 2 Counterclaim and First Amended Third Party Complaint (the "Amended Counterclaim") on April
 3 9, 2008. (*See* Doc. 44.) In their Amended Counterclaim, Mutual Vision and the Estupinians
 4 dropped their claims for libel and slander, fraud, conversion, and interference with contract.
 5 (*Compare* Doc. 23 with Doc. 44.)

6 5. Despite dropping many of their claims from the Original Counterclaim, the
 7 Amended Counterclaim significantly and substantially expanded the Original Counterclaim
 8 against the Movants. In fact, the Amended Counterclaim is essentially an entirely new complaint.
 9 For example, the Amended Counterclaim contains thirteen claims brought by Mutual Vision
 10 and/or the Estupinians, each against a combination of Movants. Many of these claims are entirely
 11 new, such as the: (1) RICO claim against Movants and Peter Ye; (2) unlawful distribution claim
 12 against Vesta Strategies, Terzakis, and Single Site Solutions; (3) failure to maintain records claim
 13 against Vesta Strategies, Terzakis, and Single Site Solutions; (4) failure to provide records claim
 14 against Vesta Strategies, Terzakis, and Single Site Solutions; (5) wrongful discharge claim
 15 against Vesta Strategies and Terzakis; (6) intentional infliction of emotional distress claim against
 16 Vesta Strategies, Terzakis, and Peter Ye; (7) contribution and apportionment of fault claim
 17 against Movants; and (8) declaratory relief against Movants. (*Compare* Doc. 23 with Doc. 44.)
 18 In addition, even where Mutual Vision and the Estupinians re-asserted some of the claims
 19 contained in their Original Counterclaim, such as their claims for breach of fiduciary duty and an
 20 accounting, they asserted those claims on behalf of different parties and/or against different
 21 parties. (*Compare* Doc. 23 with Doc. 44.) Further, in the Amended Counterclaim, for the first
 22 time, Defendants/Third Party Claimants Millennium Realty Group, Vesta Reverse 100, LLC,
 23 Vesta Capital Advisors, LLC, Edmundo Estupinian, and Haydee Estupinian asserted claims
 24 against Movants, bringing claims for contribution and declaratory relief. (*Compare* Doc. 23 with
 25 Doc. 44.)

26 6. Movants' response to the new Amended Counterclaim is currently due on April
 27 28, 2008.

28 7. In order to respond to the new allegations, claims, and assertions in the Amended

1 Counterclaim, and due to Movants' counsel's other various professional commitments, I
2 conferred in good faith with opposing counsel, Kevin Martin, and requested that he agree to allow
3 Movants a short extension until May 9, 2008 to respond to the Amended Counterclaim. (See E-
4 mail chain between Aron J. Frakes to Kevin R. Martin, attached as Exhibit A.) Mr. Martin first
5 rejected that request outright. (See Ex. A.) I then respectfully asked Mr. Martin to reconsider that
6 refusal to agree to Movants' reasonable request for an extension. (*Id.*) In response, Mr. Martin
7 then offered to "extend" the date to respond until April 25, 2008. (*Id.*) I responded by pointing
8 out that April 25, 2008 was three days *before* Movants' response to the Amended Counterclaim is
9 currently due, again asking for a reasonable extension to May 9, 2008. (*Id.*) Mr. Martin again
10 refused to grant the Movants' requested extension. (*Id.*)

11 8. Accordingly, Movants are filing this motion for a short extension of time, until
12 May 9, 2008, to answer or otherwise plead in response to the Amended Counterclaim. If
13 Movants' motion is not granted, Movants will be substantially harmed and prejudiced because
14 Movants will not have the ability to adequately and appropriately respond to the many new
15 allegations, claims, and assertions of the Amended Counterclaim.

16 9. Vesta Strategies, Terzakis, and Defendant/Counter Claimaint/Third-Party
17 Claimant Carol-Ann Tognazzini ("Tognazzini") previously filed, and the Court granted, a
18 stipulation to extend the time for Vesta Strategies and Terzakis to respond to Tognazzini's
19 Counterclaim and Third-Party Claim by ten days. (Docs. 36, 37.)

20 10. This is Movants' only request to extend the time in which to respond to the
21 Amended Counterclaim.

22 11. This request for modification of time will not alter any other dates previously
23 entered by this Court.

24 Executed on the 22nd day of April, 2008 at Chicago, Illinois. I declare under penalty of
25 perjury under the laws of the United States that the foregoing is true and correct.

26
27 _____
28 /s/ Aron J. Frakes

[PROPOSED] ORDER

_____ The Motion to Extend Time for Plaintiff/Counter Defendant Vesta Strategies, LLC and Third-Party Defendants John Terzakis, Single Site Solutions Corp. B&B Sparco Properties, Inc., and Peter Ye to Respond to the First Amended Counterclaim and First Amended Third Party Complaint is **GRANTED**. Movants are hereby given up to and including May 9, 2008 to answer or otherwise plead in response to the First Amended Counterclaim and First Amended Third Party Complaint.

_____ In addition the Court orders:

Dated: _____, 2008

Hon. James Ware
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Aron J. Frakes, an attorney, certify that I caused a copy of the attached
**MOTION AND [PROPOSED] ORDER TO EXTEND TIME FOR PLAINTIFF/COUNTER DEFENDANT
VESTA STRATEGIES, LLC AND THIRD-PARTY DEFENDANTS JOHN TERZAKIS, SINGLE SITE
SOLUTIONS CORP., B&B SPARCO PROPERTIES, INC., AND PETER YE TO RESPOND TO THE FIRST
AMENDED COUNTERCLAIM AND FIRST AMENDED THIRD PARTY COMPLAINT** to be served upon
the following counsel of record via ECF Notice of Electronic Filing on April 22, 2008:

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/s/ Aron J. Frakes

Aron J. Frakes

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